IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.760-SB of 1995

Date of Decision: April 23, 2007

Kamaldeep Singh and others

...Appellants

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.A.S.Virk, Advocate,
for the appellants.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Loaded with lust, three appellants caught hold of hapless prosecutrix and committed gang rape on her one after other. This happened in the year 1992. They are fortunate enough to escape the rigors of law as offence of gang rape under Section 376 (g) IPC was

not available on the Statute. Story of Smt.Sukhwinder Kaur, a married lady with four children goes like this:-

Her young son was admitted in the hospital at Daroha on 17.9.1992. Having stayed with her ailing son for a night, she was relieved by her husband on the next day, who then stayed with the son in the hospital. Prosecutrix left for her village in the evening at about 5.00 P.M. on 18.9.1992. On getting down at Bilaspur, she met Balwinder Singh and Surinder Kaur, uncle and aunt of her husband. Time was around 5.30 P.M. They both gave company to the prosecutrix and while walking all reached village Gidhri. Prosecutrix thereafter proceeded towards her village Seelon Kalan. At about 6/6.30 P.M., when she reached near the fields of one Mohinder Singh, appellant Kamaldeep Singh met her and offered her lift on his cycle. She declined the offer. Hardly had she covered a distance of 6-7 karams, when appellant Kamaldeep Singh over powered her and took her to a `Bajra' field. Despite resistance by the prosecutrix, Kamaldeep succeeded in breaking the string of her salwar. His co-appellants Balbir Singh and Bhajan Singh helped Kamaldeep Singh in over powering the prosecutrix. Appellant Bhajan Singh put a piece of cloth in her mouth and then Kamaldeep Singh appellant committed sexual inter-course with the prosecutrix in a forcible manner. Thereafter she was subjected to forcible sexual inter-course by appellant Balbir Singh, while being held by Bhajan Singh. The appellants thereafter went towards the road side leaving the prosecutrix there, Balwinder Singh and Surinder Kaur, who had earlier met the prosecutrix, reached the place in the meantime. Prosecutrix told them about she being subjected to gang rape. They

all returned to the village and reported the matter to village panchayat. Prosecutrix was then taken to hospital at Dehlon, where she was medically examined. Report was also lodged with the police on the following day leading to registration of the case.

The appellants were prosecuted for an offence under Sections 376/34 IPC. Upon their plea of not guilty, trial followed. Case of the prosecution received support from ten witnesses, including the prosecutrix. The evidence and the circumstances coming on record were put to the appellants when they were examined under Section 313 Cr.P.C. While denying the prosecution allegations in totality, the appellants pleaded their false implication, by saying that it was at the instance of Bant Singh Sarpanch of village Duberjee. They produced five witnesses in their defence.

The trial court, after analysing the evidence of the prosecution and the defence of the appellants, convicted them for an offence under Section 376 IPC and sentenced them to suffer rigorous imprisonment for ten years coupled with fine of Rs.2000/- each. They were further directed to undergo rigorous imprisonment for one year in default of payment of fine. This is how, they are in appeal before this court.

Mr.A.S.Virk, the counsel appearing for the appellants, while attacking the findings returned by the trial court, would say that the prosecution case suffered from various infirmities and accordingly the conviction and sentence awarded to the appellants can not be sustained. He would first contend that the medical evidence clearly showed that no injury was found on the body of the prosecutrix. As per the counsel, a forcible act of rape was bound to leave scars

and/or other telltale signs and the absence of any injury on the private and other parts of the body of the prosecutrix would negate the allegation of forcible inter-course. The counsel would also point out that there is no allegation against appellant Bhajan Singh, who had allegedly gag the prosecutrix only. He would also find fault with the version that appellants Kamaldeep Singh and Balbir Singh had raped the prosecutrix one after the other, which, according to him, may not sound convincing. The counsel has made reference to some discrepancies and variations between the statements given by the prosecutrix before the court and made before the police. As pointed out by him earlier the prosecutrix had said that she did not know the accused, whereas this is not so stated by her before the Court. The counsel highlighted that Surinder Kaur was not examined though as per the prosecutrix, she had reached the scene after the incident. By referring to the case history recorded by the doctor, the counsel points out that this is at variance with the version given by the prosecutrix before the court.

Mr.M.C.Berry, Senior Deputy Advocate General, Punjab, on the other hand, submits that minor variations, even if there in the statement of the prosecutrix, are immaterial and are not enough to disbelieve the prosecutrix. As per State counsel, the version given by the prosecutrix is supported by the independent evidence, which includes medical evidence and hence no case for interference in the appeal is made out.

Prosecutrix is a married lady and was found to be leading a happy married life. She had valid reasons about her presence at the scene of occurrence as she was returning from the hospital,

where she had stayed over night due to hospitalisation of her son. The star argument of the counsel for the appellants relating to absence of injury on the body of the prosecutrix, needs to be dismissed with contempt and so also the allegation of false implication of the appellants by the prosecutrix at the asking of Sarpanch of village Duberjee. A married lady having four children and leading happy life, would never think of putting her honour at stake to stand and make false allegations against someone on the asking of a village Sarpanch. This stand of the defence is noted to be rejected. There is no allegation made by the defence that they had known the prosecutrix. They have not pleaded it to be a case of any consent. In fact the defence has highlighted the version of the prosecutrix where she has said that she did not know the appellants. In this background, if the testimony of the prosecutrix, which is well supported by other evidence on record, is to be believed, then question of injury, as highlighted by the defence, would pale into insignificance. The absence of injury is to be viewed in the background that she is a married lady having children. Even if subjected to a forcible inter-course, she may not have suffered injuries. Her version is supported by the evidence of Balwinder Singh (PW-2), uncle of her husband. Criticism that he is related to the prosecutrix, cannot help the case of defence in any manner. Incident of this nature is generally disclosed to close relations and not to strangers and to say that a particular witness is a relation, would not be of much importance. Even otherwise, there is no inflexible proposition of law that evidence of a related witness is required to be discarded only on the ground that it is coming from the mouth of a

related witness. There is no general rule that evidence of such witness is to be believed on corroboration. The evidence of related or inimical witness may call for scrutiny of the evidence more closely and with care but there is no rule that it is to be discarded on that ground. The allegation, as made by the prosecutrix, would seek support from the medical evidence as well and is not only dependent for support from the evidence of a witness, who is related to the prosecutrix. The swabs taken from posterior fornix of the prosecutrix and sent for chemical examination showed presence of semen on the swab and her underwear. Not only this, PW-3 Dr.K.J.S.Kakkar also conducted the medical examination of appellants Kamaldeep Singh and Balbir Singh on 25.9.1992. He found three to four lacerations on the medial aspect of right thigh in the middle with dimension of 3-3.5 cms of Balbir Singh appellant. Multiple lacerations 5 to 6 in number of the size 3.5 cm.x 0.5 cm. on the medial aspect of left leg of appellant Kamaldeep Singh was also found by the doctor. The doctor found that both the appellants were having scab formation. He also deposed that the appellants were fit to perform sexual inter-course. In addition, the prosecution also relied upon an extra-judicial confession made by appellants before one Mohan Singh (PW-4), a Sarpanch of village Harnampura. He had produced all the appellants before the police on 24.9.1992. No significance needs to be attached to the plea raised by the defence that the appellants were not known to the prosecutrix. Prosecution had moved the court for conducting an identification parade and had produced the appellants with muffled faces before the court of Judicial Magistrate Ist Class, Ludhiana. They, however, refused to

join identification parade on the plea that they were arrested on 19.9.1992 and were shown 3-4 times to the witnesses. They cannot now complain about their identity being not known or regarding ability of the prosecutrix to identify them or to name them. Except minor variations noticeable in the statement of the prosecutrix, which are too insignificant, she gave a consistent account of events and stood the cross-examination in well and proper manner. The discrepancies, as pointed out, are not on the core of the testimony, but are on minor fringes and thus cannot militate against the testimony of the prosecutrix. No significance can be attached to the case history recorded by the doctor as it could not be established if this history was recorded through the prosecutrix. It is also noticeable that statement of the prosecutrix was recorded in two parts with a gap of about 2-1/2 months in between in the year 1993 and thus it was natural for some variations to creep in. Even otherwise, various factors, like knowledge of the witness, power of expression, re-collection and such like infinite number of circumstances can lead to some variation in the statements. Accordingly, what is required to be seen is the cumulative effect of the evidence and the circumstances that are brought on record through the witnesses while judging his/her credibility. There are no such glaring variations and discrepancies in the statements, which may create doubt about her version. It is, thus, seen that prosecution has succeeded in proving the case against the appellants beyond reasonable doubt. Nothing substantial could be pointed out before me which could have gone to shake the case of the prosecution needing any interference in the conviction and award of sentence. Even otherwise, the statement of

prosecutrix alone is enough to find the appellants guilty, specially so when it is considered to be worthy of reliance and is not even found to be suffering from any serious infirmity, which may call for any analysis or corroboration thereof. The finding of guilt as recorded by the trial court is, thus, up-held.

The counsel for the appellants, at this stage, prays for leniency in the sentence awarded to the appellants mainly on the ground that it is an incident, which happened fifteen years ago and the appellants seem to have already suffered enough by now. Similar plea raised by the appellants before the trial court was negated. Apparently, this case does not seem to be carrying any mitigating circumstances except that it is pending for the last fifteen years. The appeal is pending since the year 1995. Normally no compassion or mercy may be called for in lust loaded criminality, but award of any long incarceration may sometimes lead to aggravate the situation. Jails in our country may not be carrying very conducive environment. It can be noticed that generally what happens in prison is sex starvation, criminal companionship and such like various other vices which generally lead to dehumanizing a person.

Considering long pendency of this case and the environment in the prison, to be not a very happy sojourn for one to be in, I am inclined to extend some mercy to the appellants. The sentence awarded to the appellants is reduced to a period of seven years rigorous imprisonment instead of ten years as awarded by the trial court. Subject to this, the appeal is dismissed. It is apparent from the record that the appellants are on bail. They are accordingly

directed to surrender before the Chief Judicial Magistrate, Ludhiana to undergo the remaining portion of sentence.

April 23, 2007 (RANJIT SINGH)
ramesh JUDGE